
(2000) 09 MP CK 0084

In the Madhya Pradesh High Court

Case No : M.A. No's. 724 to 730 of 1999

Shreeram

APPELLANT

Vs

Peerulal and Another

RESPONDENT

Date of Decision : 07-09-2000

Acts Referred:

Citation : (2001) 1 ACC 430 : (2002) ACJ 898

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Advocate : Rajesh Lal, for the Appellant; Dandwate, for the Respondent

Judgement

A.M. Sapre, J.—The decision rendered in this appeal shall govern the disposal of M.A. Nos. 725, 726, 727, 728, 729 and 730 of 1999, as all these appeals arise out of one award and secondly they arise out of one accident.

2. In short, the case of these appellants was that while travelling in jeep No. MP 13-C1890, on 13.10.1996, they received injuries as the jeep while moving on the road lost control and collapsed. According to appellants (claimants in Tribunal), this accident occurred solely due to rash and negligent driving of driver, Babulal, who died on the spot. According to appellants, they received injuries and some died and hence they are entitled to receive adequate compensation from owner of the offending vehicle, respondent No. 1 and insurance company, respondent No. 2 with whom the offending vehicle was insured at the relevant time. In every case, the claim of every claimant (appellant) varied due to nature of injuries sustained.

3. In substance, the respondents denied their liability. According to the insurance company, no liability could be fastened on them because of breach of policy in question, it was contended that firstly, Babulal, the driver of offending vehicle had no driving licence and secondly, the jeep in question was being used as a commercial vehicle claimants were travelling on payment and hence on these two grounds the liability was disowned.

4. The learned Member of the Tribunal by one impugned award passed in all the cases partly allowed the claim petitions. It was held that the accident was due to sheer negligence of driver, deceased Babulal. It was then held that it could not be proved that Babulal was not holding the driving licence as alleged by insurance company, it was then held that insurance company is not liable because the claimants were found travelling as passengers on hire in a private vehicle. The Tribunal then considered the case of every claimant and then proceeded to award the claim to every claimant according to injuries sustained. It is this award which is impugned in these appeals by the claimants.

5. Heard Mr. Rajesh Lal for appellant. None for the respondent No. 1 and Mr. Dandwate for respondent No. 2.

6. Learned counsel for the appellant in all these appeals made twofold submissions. According to the learned Counsel in view of the decision of Supreme Court in the case of Satpal Singh 2000 ACJ 1 (SC) and this Court "s view in New India Assurance Co. Ltd. Vs. Bafatbai and Others, , the insurance company should have been made liable. It was his submission that claimants were in fact gratuitous passengers on the vehicle and hence their risk was also covered in the policy. The other submission was for enhancement in the compensation awarded by the Tribunal. According to the appellants they were entitled for more than what was awarded to them.

7. The reply of learned Counsel for the respondents was that of upholding the impugned award. According to him no case is made out to reverse the finding on any of the issues urged by the learned Counsel for appellant and hence the same be upheld.

8. In my opinion, in view of ratio of New India Assurance Company Vs. Shri Satpal Singh and Others, and that of New India Assurance Co. Ltd. Vs. Bafatbai and Others, , I am inclined to hold that insurance company should be held liable. Since the accident in question was subsequent to amendment, i.e., in the year 1996 (13.10.1996) the ratio of Satpal Singh's case (supra) will govern the field. In my opinion, the status of claimant in the jeep was that of gratuitous passenger. Merely because as was urged and held in New India Assurance Co."s case (supra) by the Division Bench of this Court that some payment was made by some claimant for travelling to driver would not change the status of claimants so as to deny them the right to claim the compensation from the insurance company on the basis of law laid down by Supreme Court in Satpal Singh's case and in New India Assurance Co."s case. In this case driver of vehicle having died was not examined. It is, therefore, not known as to whether the vehicle in question was being used as a commercial vehicle as contended by the insurance company by the owner of the vehicle on regular basis or even on that day or/and whether the alleged payment if at all made by some of the claimants directly to deceased driver was as a result of regular use of the offending vehicle by the owner of the vehicle as a commercial vehicle thereby contravening the terms of policy. This plea would have had some substance if

there had been any evidence led by the insurance company. I am, therefore, not inclined to uphold the finding returned by the learned Member of Tribunal on this issue and accordingly reverse it. The aforesaid finding was subject-matter of every claim petition and, therefore, in all these claim cases out of which these appeals arise, the impugned finding is set aside. It is accordingly held that insurance company was wrongly exonerated from the liability and, therefore, it should have been held liable along with the owner of the offending vehicle.

9. So far as the aforesaid issue regarding liability of insurance company is concerned, the same will apply in all these claim cases out of which these appeals arise-this finding being common in all and is based upon same facts of the case.

10. This takes me to decide in each case the quantum of compensation that was determined by learned Member of the Tribunal on the basis of the injuries suffered by the claimant (appellant).

11. Coming to the case of the present appellant Shreeram, i.e., in M.A. No. 724 of 1999 he filed the claim petition on the allegation that he received injuries on his body due to which he had developed certain disability giving rise to claim compensation for the loss and disability suffered by him on account of injuries received in the accident. In the opinion of the learned Member of the Tribunal, since the claimant failed to prove the exact nature of the injuries, its seriousness, disability factor resultant in and, therefore, no compensation can be awarded to the claimant. It was also observed that claimant only suffered nominal injuries which were of very simple nature and did not result into any disability in his body and, therefore, no compensation can be awarded to him. It is this finding which is impugned by the claimant in this appeal.

12. The case of this claimant (Shree-ram) is dealt with by the learned Member of the Tribunal in para 16 of the impugned award (Claim Case No. 319 of 1997). After having perused the impugned award and the finding recorded by the learned Member of the Tribunal relating to the grant of compensation and its quantum and also having perused the document filed by the claimant I find that reasonable compensation taking into account all aspects can be awarded to the claimant. I concur with the finding recorded by the learned Member of the Tribunal when he holds that in the absence of examination of doctor, in the absence of any medical report and in the absence of any cogent evidence to prove the exact nature of injuries and its resultant loss whether permanent or partial, no question arises for grant of any compensation to the claimant. In order to claim compensation, it is not only material but decisive that these facts must be proved by leading proper and cogent evidence by claimant. Admittedly, this was not done. It is now almost an admitted fact that the claimant had suffered only simple injuries which must have been cured immediately after occurrence of the accident creating no impact much less adverse on claimant.

13. In my opinion and as observed supra, looking to the facts that claimant had

to suffer a trauma of an accident and having received very minor injuries, a sum of Rs. 5,000 towards pain and suffering can be awarded keeping in view the objective underlined in the Schedule appended to the Motor Vehicles Act. Accordingly Rs. 5,000 is awarded which will be payable jointly and severally by the non-applicants (respondents). This amount will carry interest at the rate of 12 per cent from the date of application till realisation.

14. This takes me to Miscellaneous Appeal No. 725 of 1999 arising out of Claim Case No. 422 of 1997 filed by Vijay Singh.

15. The appellant (claimant) filed the claim petition on the allegations that he received certain injuries on his body as a result of which he has become entitled to claim compensation for the loss and disability suffered by him on account of injuries received in the accident. In the opinion of the learned trial Member, since the claimant failed to prove that he had received grievous injuries and that any permanent disability occurred due to those injuries, no compensation can be awarded to him. It was found that claimant suffered very nominal injuries (two) on his body. It is this finding which is under challenge by the claimant in this appeal.

16. The case of this claimant is dealt with by the learned Member of the Tribunal in para 18 of the impugned award. After having perused the impugned award and the finding recorded by the learned Tribunal and also the documents filed by the claimant, I find that reasonable compensation taking into account all aspects can be awarded to the claimant. In the opinion of the learned trial Member, the claimant ought to have examined the doctor who had given him the disability certificate, Exh. P-54. It was also found against the appellant that he had not filed any medical report, nor X-ray report complaining and showing that he had actually suffered injuries alleged to be suffered by him. Exh. P-58, which is a medical report issued immediately after the accident shows that claimant had suffered some injuries on his body which were not of very serious or grievous nature. Accordingly and taking into account overall aspects and the facts that claimant did suffer some injuries though not very grievous and though not adequately proved to be leaving any disability, a sum of Rs. 5,000 can be awarded to the claimant. This amount will carry interest at the rate of 12 per cent per annum from the date of application till realisation and the same will be payable jointly and severally by the respondents.

17. Accordingly, the claimant's Case No. 422 of 1997 is partly allowed and an award of Rs. 5,000 together with 12 per cent interest is awarded to the claimant which will be recoverable jointly and severally from the respondents. Resultantly, Appeal No. 725 of 1999 is partly allowed.

18. This takes me to Miscellaneous Appeal No. 726 of 1999. The claimant of this case is one Savitri Bai, who was also travelling in the same offending vehicle on the fateful day. She filed a claim petition claiming compensation for the injuries that she claimed to have suffered in the said accident. The Tribunal rejected the

claim petition, holding that claimant did not suffer any injury much less serious/grievous, resulting into any permanent disability. In the opinion of the Tribunal, what was suffered by the claimant was only minor injuries which did not result into any permanent or partial disability and secondly, no doctor was examined to prove this injury, its nature and a resultant disability factor and hence, no compensation can be awarded. It is this finding which is under challenge by filing this appeal (M.A. No. 726 of 1999) by the claimant.

19. Having heard the learned Counsel for the parties and having perused the entire record of the case, I am of the opinion that claimant should be awarded a reasonable sum of Rs. 5,000 towards injuries and pain and suffering. In my opinion, though the learned Member was justified to some extent in holding that no doctor was examined to prove the disability factor, the fact remains that claimant did suffer some injuries on her body. True it is that these injuries were not of a very serious nature and did not result into any permanent or partial disability. In order to get compensation, it is necessary for the claimant to prove that she suffered permanent or partial disablement in any part of the body, which has disabled her to perform her day-to-day work. This can only be proved by the medical treatment and the doctor who treated the claimant for these injuries. Filing of a certificate by itself is not sufficient, but the same has to be duly proved by the doctor, who has issued the certificate. In addition, there should be some other medical evidence such as medical reports, the treatment taken, the expenditure incurred in receiving treatment, etc. The supporting documents are required to be filed to prove the genuineness of the claim. If these documents are filed and if evidence of doctor is tendered then certificate given by the doctor certifying disability can certainly be taken into account for determining the compensation payable. It is in this context the learned trial Judge has held that mere filing of claim without there being any evidence on record either oral or documentary no compensation can be awarded.

20. In my opinion, the claimant appears to have suffered an injury which is clear by Exh. P-58, but since the doctor certifying the injury was not examined nor any document was filed, no compensation as such can be awarded, except the reasonable one which as stated above should be Rs. 5,000 only. This is because claimant met with an accident, suffered some injury and underwent pain and suffering. I accordingly allow the Claim Petition No. 423 of 1997 in part and award a sum of Rs. 5,000 together with interest at the rate of 12 per cent per annum on the awarded sum payable from the date of application till realisation and is recoverable from all the respondents jointly and severally. Resultantly, M.A. No. 726 of 1999 is partly allowed.

21. This takes me to Miscellaneous Appeal No. 727 of 1999, arising out of the Claim Case No. 421 of 1997. Claimant in this case is one Jyotsna Bai, who was also travelling in the offending vehicle on that fateful day. She complained that she also suffered certain injuries giving her a right to claim compensation for the loss and disability suffered due to the injuries. The learned trial Judge was

pleased to reject the claim petition holding that claimant has miserably failed to prove the injuries, its extent and the resultant loss and, therefore, no compensation can be awarded. It is this finding which is under challenge by the claimant in the appeal.

22. Having heard the learned Counsel for the parties and having perused the finding recorded in para 17 of the impugned judgment/award, I am of the view that the claimant/appellant is entitled to get a reasonable compensation of Rs. 5,000 for the injuries, pain and suffering. It is an admitted fact that though the claimant claimed to have suffered certain injuries but did not lead any evidence to satisfy the conscience of the court that any disability whether permanent or partial in any part of the body of the claimant is due to the injuries. As already held supra in other cases, that mere filing of a certificate of a doctor certifying the disability is not enough. It is necessary to file and tender adequate medical evidence in addition to the certificate to get some compensation commensurate with the gravity of the injuries suffered. Even in this case, the claimant did not lead any evidence nor examined any doctor much less a doctor who has certified the disability factor. Claimant also did not file any other medical evidence to substantiate that she actually received the medical treatment in the hospital and spent money in receiving the medical treatment. These are all relevant facts which are necessary before a claim can be considered for a grant of compensation. On the other hand, Exh. P-18 which is a medical report obtained immediately after the accident indicates that claimant suffered very minor injuries. Looking to the evidence led it is not possible to conclude that claimant suffered any serious/major or grievous injury which has resulted into any permanent disability, so as to entitle the court to award the compensation. However, looking to the fact that claimant did suffer an accident and underwent trauma of a tragic incident and the fact that she suffered some minor injuries, this Court is inclined to award a sum of Rs. 5,000 as a reasonable and fair compensation which is to carry interest at the rate of 12 per cent per annum from the date of application till its realisation. The awarded sum of Rs. 5,000 together with the interest shall be recovered jointly and severally against all the non-applicants.

23. Accordingly Claim Case No. 427 of 1997 is partly allowed and resultantly M.A. No. 727 of 1999 is also allowed as indicated above.

24. This takes me to Miscellaneous Appeal No. 728 of 1999, arising out of Claim Case No. 316 of 1997, filed by one Krishna Bai. The case of the claimant was also like the other claimants that she was also travelling in the offending vehicle on that fateful day. She also suffered certain injuries and, therefore, she is entitled to claim compensation for the loss and disability suffered. According to her there was a fracture in her left hand and some injuries on her face. In the opinion of trial Judge, since the claimant did not tender any evidence much less medical evidence such as not examining the doctor, it is not proved that any disability has been suffered by the claimant. Accordingly no compensation was

awarded. It is this finding which is under challenge by the said claimant.

25. After hearing the parties and perusing the record, I am of the view that claimant is entitled for a reasonable sum of Rs. 5,000 as has been awarded in the other cases on the same parity, while deciding this case. Even in this case, the claimant simply filed one disability certificate and the injuries mentioned therein. No doctor was examined, even the doctor who had issued the certificate. There was no other evidence which could be looked into independent of the certificate issued. Under these circumstances to hold that claimant suffered exclusive injuries resulting into disability would not be proper. It was necessary for the claimant to show that injury has resulted into disability by calling the doctor who treated her to give evidence. All this was not done. Mere filing of certificate is, therefore, not adequate nor enough. I concur with the finding recorded by the learned trial Judge on this aspect.

26. In any event, a sum of Rs. 5,000 as compensation, which is to carry interest at the rate of 12 per cent per annum from the date of application till realisation is a reasonable compensation that can be always awarded towards pain and suffering and the minor injury that claimant suffered.

27. Accordingly the Claim Petition No. 316 of 1997 is partly allowed and an award of Rs. 5,000 together with interest at the rate of 12 per cent per annum is passed jointly and severally against all the nonapplicants (respondents). Resultantly the M.A. No. 728 of 1999 is partly allowed.

28. This takes me to M.A. No. 729 of 1999, arising out of Claim Case No. 309 of 1997, claimant in this case is one Tulsiram, who was also travelling in the offending vehicle on that fateful day. He complained that he also suffered certain injuries giving him a right to claim compensation for the loss and disability suffered due to injuries. The learned trial Judge was pleased to reject the claim petition holding that claimant has miserably failed to prove the injury, its extent and the resultant loss and, therefore, no compensation can be awarded, it is this finding which is under challenge by the claimant in this appeal.

29. Having heard the learned Counsel for the parties and having perused the finding recorded in para 14 of the impugned judgment/award, I am of the view that the claimant/appellant is entitled to get a reasonable compensation of Rs. 5,000 for the injuries, pain and suffering. It is an admitted fact that though claimant claimed to have suffered certain injuries but did not lead any evidence to satisfy the conscience of the court that any disability whether permanent or partial in any part of the body, the claimant suffered due to the injuries. As already held supra in other cases, that mere filing of a doctor's certificate certifying a disability is not enough. It is necessary to file and tender adequate medical evidence in addition to the certificate to get some compensation commensurate with the gravity of the injuries suffered. Even in this case the claimant did not lead any evidence nor examined any doctor much less the doctor who has certified the disability factor. Claimant also did not file any other

medical evidence to substantiate that he actually received the medical treatment in the hospital and spent money in receiving the medical treatment. However, looking to the fact that claimant did suffer an accident and underwent trauma of a tragic incident and the fact that he suffered some minor injuries, this Court is inclined to award a sum of Rs. 5,000 as a reasonable and fair compensation, which has to carry interest at the rate of 12 per cent per annum from the date of application till realisation. The awarded sum of Rs. 5,000 together with interest shall be recovered jointly and severally against all the non-applicants.

30. Accordingly Claim Case No. 309 of 1997 is partly allowed and resultantly M.A. No. 729 of 1999 is also allowed as indicated above.

31. This takes me to Miscellaneous Appeal No. 730 of 1999, arising out of Claim Case No. 424 of 1997, filed by one Kala Bai, claiming that she was also travelling in the offending vehicle on the fateful day and suffered injuries due to the accident occurred on 13.10.1996 and, therefore, she is entitled to claim compensation for the loss and disability suffered. In the opinion of the trial Judge since the claimant did not tender any evidence much less medical evidence such as not examining the doctor. It is not proved that any disability has been suffered by the claimant due to the injury. Accordingly, no compensation was awarded, it is this finding which is under challenge by the said claimant.

32. After hearing the parties and perusing the entire record, I am of the view that claimant is entitled for a reasonable sum of Rs. 5,000 as has been awarded in the other cases on the same parity while deciding this case. Even in this case, the claimant simply filed one disability certificate, Exh. P-12, but no doctor was examined, even the doctor who had issued the certificate for disability. There was no other evidence which could be looked into independent of the certificate issued. Under these circumstances, to hold that claimant suffered exclusive injuries resulting in disability would not be proper. It was necessary for the claimant to show that injury has resulted in disability by calling the doctor who treated her to give evidence. All this was not done. Mere filing of the certificate is, therefore, not adequate nor enough. I concur with the finding recorded by the learned trial Judge on this aspect.

33. In any event, a sum of Rs. 5,000 as compensation, which has to carry interest at the rate of 12 per cent per annum from the date of application till realisation is a reasonable compensation that can be always awarded towards pain and suffering and the minor injuries that claimant suffered.

34. Accordingly the claim petition is partly allowed and award of Rs. 5,000 together with interest at the rate of 12 per cent per annum is passed jointly and severally against all the non-applicants (respondents). Resultantly the M.A. No. 730 of 1999 is allowed as indicated above.

Costs of the appeal Rs. 500 to be borne by the respondents.